form as near as may be to the established forms, etc., of the state within which the court is held, and that the Minnesota statute provided that an award in cases of this character should bear interest from the time of the filing of the commissioners' report. (3) That in the case of *United States* v. *Jones,* 109 U. S. 513, the Supreme Court had a similar case before it, and the rule of damages applied here was also applied there and was not criticised by the court. It is conceded that the power of eminent domain is inherent in the government; *Boom* v. *Patterson,* 98 U. S. 403; *Kohn* v. *United States,* 91 U. S. 367; that just compensation be made is the only limitation upon it, and that the government is not liable to pay interest on claims in the absence of express agreement or statutory authority. Rev. Stat. U. S., § 1091; *United States* v. *Sherman,* 98 U. S. 565; *United States* v. *Bayard,* 127 U. S. 251. It can hardly be said to be an adversary proceeding on the part of the government, since both parties are actors, one to acquire title, the other to get as great an award as he can. Plaintiff complains of nothing, defendant denies no past or threatened wrong. *City R. R.* v. *Boynton,* 204 U. S. 570. The case of *United States* v. *Jones,* 109 U. S. 513, while a near analogy, is not directly in point. The damages in that case were assessed under a special act of Congress, which directed the damages to be ascertained in the mode provided for by the laws of the state where the property lay, and as the Wisconsin Statute allowed interest it was properly allowed in that case. In the present case no special act was passed nor was one necessary. While the majority do not go so far as to hold that payment of interest is one of the modes of proceedings which is made compulsory upon the United States courts, they hold that it was a palpably fair method of giving just compensation, which the constitution provides be given. The act declaring the modes of proceedings shall conform to the practice, forms, etc., existing in the state courts, while to a large extent mandatory, is to some extent only directory and advisory. *Chappell* v. *United States,* 81 Fed. 764. When the judge, in his discretion, deems it advisable he may reject any subordinate provision of such state statute, if in his opinion it would unwisely encumber the administration of the law or tend to defeat the ends of justice. *Indianapolis R. R.* v. *Horst,* 93 U. S. 291; *Phelps* v. *Oakes,* 117 U. S. 236; *Luxton* v. *N. River Bridge Co.,* 147 U. S. 337. The determination of just compensation is a judicial question. *Monongahela Navigation Co.* v. *United States,* 148 U. S. 312, and in so far as the statute determines the method of making just compensation, it is in conflict with *Shoemaker* v. *United States,* 147 U. S. 282. While there seems to be no case directly in point, the dissenting opinion seems to be well taken, based on the reasoning of analogous cases.

EMINENT DOMAIN—"PRIVATE PROPERTY"—OWNER'S REMEDY—INJUNCTION. —Art. 16, § 1, of the Constitution of Washington provided, "No private property shall be taken or damaged for public or private use without just compensation having first been made or paid into court for the owner." Plaintiff was the owner of property abutting on a street. Defendant railroad entered upon the street, in front of plaintiff's premises, in the night

time, and built thereon its main line of railroad. Plaintiff sought an injunction to restrain defendant from operating its railroad until his damages were paid. *Held,* that an abutting owner's right of ingress and egress is a property right within the meaning of the constitution, and an injunction would lie; but the injunction would be held in abeyance for thirty days to give the defendant an opportunity to commence condemnation proceedings. *Lund et ux.* v. *Idaho & W. N. R. R.* (1908), — Wash. —, 97 Pac. 665.

The granting of the injunction here seems to be in accord with the strict letter of the constitution and with former holdings of this court. *Brown* v. *Seattle,* 5 Wash. 35, 31 Pac. 313, 32 Pac. 214, 18 L. R. A. 161; *State ex rel. Smith* v. *Superior Court,* 26 Wash. 278, 66 Pac. 385. Under a similar constitutional provision it was held that an injunction would not lie where damages were consequential upon entry on lands. *McMahon & Perrin* v. *Railroad Company,* 41 La. Ann. 827. Under a like constitutional provision it was held that an injunction would not lie to enjoin a municipal corporation from grading a street until compensation was paid for damage done to abutting property, but this court intimated if property were actually taken an injunction would lie to restrain its use until compensation was paid therefor. *Moore* v. *City of Atlanta,* 70 Ga. 611. In Illinois, where injunctions have been asked to restrain railroad companies from constructing or operating railroad lines until compensation be paid for damage done to abutting property, it has been held that an injunction would not be granted unless property were actually taken. *Stetson* v. *Chi. & Evanston R. R. Co.,* 75 Ill. 74; *Patterson* v. *Chi., Dan. & Vin. R. R. Co.,* 75 Ill. 588; *P. & I. Ry. Co.* v. *Schertz et al.,* 84 Ill. 135; *Mills* v. *Parlin et al.,* 106 Ill. 60; *Parker* v. *Catholic Bishop,* 146 Ill. 158; *Doane* v. *Lake Street El. R. R. Co.,* 165 Ill. 510; and see HIGH, INJUNCTIONS, 3rd Ed., § 637. The Washington court distinguishes the Illinois cases on the ground that the Illinois constitution does not provide that the compensation must be made before the damage is done.

EVIDENCE—BURDEN OF PROOF—FRAUDULENT CONVEYANCES.—Land, the title to which stood in the name of the wife, was attached by creditors of the husband, who claimed it had been fraudulently conveyed from husband to wife. *Held,* that the burden of proof was on the wife to show that the transaction was not fraudulent. *Strickland* v. *Jones* (1908), — Ga. —, 62 S. E. 322.

The present case is supported by the great weight of authority, but the decisions are by no means unanimous. Ordinarily the burden of proof rests upon the creditor who assails a transfer for fraud. BUMP, FRAUD. CONVEY., 4th Ed., § 611. But on account of the community of interest existing between husband and wife, and the opportunity for fraud upon the creditors of the husband, most courts look with suspicion upon transfers of property by an insolvent debtor to his wife and require the wife who seeks to hold the property against the creditors to assume the burden of proof, and to show the transaction not fraudulent. *Robinson* v. *Moseley,* 93 Ala. 70;